

Golden Valley Electric Association, Inc.

**True North Power Line
Right-of-way**

ADL 416477

Final Decision

Action Requested

Golden Valley Electric Association, Inc. (GVEA) has applied to the Division of Mining, Land and Water (DMLW), Department of Natural Resources (DNR) for a 30-foot wide public right-of-way. GVEA plans to construct, operate and maintain an overhead electrical distribution power line to provide electricity to the True North Project, and possibly, in the future, serve other members in the area. GVEA's preferred route for the power line as shown on the map in Attachment 1 as Route A. This right-of-way will extend into the mill site lease for the True North mine development.

Scope of Review and Finding

The scope of the decision is limited to determining whether this use is a good use of state land and whether it provides the greatest economic benefit to the state and the development of its resources. In making this determination, DNR evaluated the reasonably foreseeable, significant effects that the construction, operation and maintenance of the GVEA power line has on state land. The DNR's decision evaluated the application with respect to material issues and facts, available land management information, public and agency comment, and DNR responsibilities under AS 38.04, AS 38.05, and specifically AS 38.05.850. This decision discusses the potential effects in general terms that may occur with the use of the right-of-way and the mitigation measures to be imposed as terms of the right-of-way to reduce or eliminate possible adverse effects.

Authority

The authority to issue a public right-of way resides in AS 38.05.850. Due to recent legislative changes, right-of-way permits issued by the DNR under the authority of AS 38.05.850 are exempt from the best interest finding requirements of AS 38.05.035(e). The amendment to AS 38.05.850, requires public notice before issuing the right-of-way if the director determines, by evaluation of the nature and duration of the intended use, that the right-of-way is not functionally revocable. This applies only to the right-of-way on state land under the jurisdiction and authority of the DNR.

Under AS 38.05.801 and consistent with the Alaska Mental Health Enabling Act, the Alaska Mental Health Trust Land Office (TLO) is processing a separate permit for Mental Health Trust lands.

Administrative Record

This right-of-way request was applied for under AS 38.05.850. Right-of way application file, ADL 416477 comprises the administrative record for this case.

The "Decisions Overview and Preface for the True North Project" document dated December 20, 2000 is incorporated by reference into this final decision.

Legal Description and Title

The following table summarizes the land title, classification for the power line right-of-way request on DNR managed state land. A map showing land status is Attachment 2.

LEGAL DESCRIPTION/TITLE/CLASSIFICATION

		GS	Patent/TAP	Classification	Length/Acres
T 3 N, R 1 E, FM					
Sec 33	SE1/4, S1/2NE1/4, SE1/4NW1/4	GS-1104	Patented 50-66-0026	Minerals/Public Recreation TBAP 1-J-2	3878 ft/2.7 ac
Sec 34	S1/2	GS-1104	Patented 50-66-0026	Minerals/Public Recreation TBAP 1-J-2	4503 ft/3.1 ac

The power line route crosses state mining claims in Sections 33 and 34. FGMI has an interest in this all these claims.

Tanana Basin Area Plan and FNSB Zoning

This right-of-way request is located within the Tanana Basin Area Plan (TBAP) in Subregion 1- Fairbanks North Star Borough, Management Unit 1J2-Cleary Summit-Pedro. The primary surface use designation is Minerals/Public Recreation. The secondary surface use is Forestry. The right-of-way is consistent with the designated use (minerals) in the TBAP as required by AS 38.04.065(f), as this right-of-way is for the development of the True North Project.

The Fairbanks North Star Borough has zoned this area General Use.

Background

The True North Project is located on the northwest flank of Pedro Dome approximately 25 miles northeast of Fairbanks. This power line right-of-way will provide power from the existing power line on Pedro Dome. The first portion of the power line will be located on Mental Health Trust Land. Currently, FGMI has indicated the mine life for the Hindenburg and East pits is three years with reclamation to follow. FGMI is conducting exploration drilling to further define mineralization in the area. Exploration activities are anticipated to continue during the mine life to locate possible areas for expansion and associated mine development.

Based solely upon the current mine's life, this power line could be used for 3 to 5 years, unless additional mineral resources are found or some other demand for the electricity surfaces.

Traditional Use Finding

In accordance with AS 38.05.830, a traditional use finding is not required for the right-of-way since it is within the Fairbanks North Star Borough.

Agency and Public Review

No formal agency review was conducted for this right-of-way.

The recent amendment to AS 38.05.850 requires public notice of the right-of-way if DNR determines the right-of-way is not functionally revocable. While this right-of-way has a fixed term

and by its terms can be revoked at will by DNR, it was included in the public notice for the True North Project as it is an integral part of the larger project.

A complete discussion regarding public review can be found in the "Decisions Overview and Preface for the True North Project" in Chapter III. Public Notice and Public Participation for the True North Project.

Discussion

GVEA submitted its preferred route alignment to the DNR. The route, amended by letter dated May 31, 2000, generally follows the most direct route from Pedro Dome to the project area. In doing so, it avoids the patented federal mining claims in Section 34. GVEA submitted a letter, dated July 8, 2000, which shows a slight variation on their preferred route. GVEA did identify a couple of route variations that were mentioned in the Proposed Decision. The variation follows the North Pedro road alternative in the SW1/4 of Section 34.

GVEA has indicated that their route possibilities are limited considerably by the terrain in the area. GVEA contacted FGMI's road design engineer and was informed that the road is projected to have 2:1 back slopes; 2.5:1 fill slopes and in some of the steepest areas 0.25:1 vertical rock slopes. For the road and the power line to be co-located in some of these areas, the roadbed would have to be extremely wide. As a result, GVEA prefers a route (Route A) that crosses more favorable power line construction terrain.

During the public comment periods, no substantive comments were received that related to GVEA's request. A complete summary of the comments for the True North Project are in the "Decisions Overview and Preface for the True North Project" Chapter IV. Summary and Response to Comments.

Since DNR's Final Decision for the True North Access Road is to issue the North Pedro route, GVEA's Route A (as shown in Attachment 1) is the route to be authorized by DNR by this decision. Route A is the more favorable terrain for power line construction and as both the North Pedro Access Road and the GVEA power line will be under construction as basically the same time, construction will be facilitated by approving Route A.

Reclamation: GVEA may be required to reclaim the power line upon completion of FGMI's mining in the area. Any reclamation will be dependent upon other proposed uses in the area that require power distribution. GVEA will be required to demonstrate to the Director, or representative, that there is a demonstrated need to provide power distribution to other users in the area in order to leave the power line upon completion of FGMI's mining. A GVEA representative with the authority to commit GVEA to reclamation, should it be required, must execute the land use permit for early entry to construct, use and maintain the power line, and the final right-of-way permit.

Reasonably Foreseeable, Significant Effects: The reasonably foreseeable effects of the power line include the following:

- Clearing a 30-foot wide right-of-way to maintain for the duration of the right-of-way. Stipulations attached to the DNR authorizations will require the trees to be cut and decked on the sides of the right-of-way or hydro-axed, and no disturbance to the vegetative mat. Should the right-of-way be reclaimed, vegetation will reestablish itself in the previously cleared area.
- This power line is on the north side of Pedro Dome and may be seen by residents to the north and northwest. If GVEA identifies additional consumers in the future, this power line may be extended to provide either residential or commercial power. By stipulation in the DNR authorization, GVEA will be required to reclaim the right-of-way.

The effects of this right-of-way are expected to be minimal.

Environmental Risk Assessment

The activity involves the construction, operation and maintenance of an overhead electrical distribution line. Gasoline and diesel powered trucks and construction equipment will be used for construction of the power line. The environmental risk for the right-of-way is minimal. The permits will contain the standard language for reporting spills.

Survey/As-built

GVEA will be required to provide the DNR with an as-built survey of the right-of-way based DNR survey instructions.

Performance Guaranty/Indemnification/Insurance

Performance Guaranty: GVEA will be required to obtain a \$79,200 performance guaranty during the construction phase of the power line. This guaranty may be used to reclaim the route in the event construction begins and mining at the True North Project is not initiated. This guaranty is based upon GVEA's estimated cost of removal, at today's costs. This guaranty amount includes that portion on Mental Health Trust land. This performance guaranty must be payable to the State of Alaska, DNR, Division of Mining, Land and Water, and the Mental Health Trust Land. The guaranty will be released upon completion of construction and the initiation of mining by FGMI.

GVEA has on file with the DNR a \$ 5000 performance guaranty in the form of a Certificate of Deposit for any power line construction, operation and maintenance. This guaranty will be in place for the remainder of the right-of-way's term.

Indemnification: GVEA will be required to indemnify the state as is normally required in all state authorizations.

Insurance: GVEA has named the State of Alaska, DNR as an additional insured on its insurance. The general liability limits are \$1,000,000/\$2,000,000.

Fees

DNR fee regulations, 11 AAC 05.010(e)(13), set the fee for a public right-of-way under AS 38.05.810 is a one-time fee of 10 cents per lineal foot. This fee is due upon issuance of the land use permit for construction, use and survey.

Term

The term for this power line right-of-way will be 10 years. The right-of-way is revocable and could be terminated earlier for non-use. The Director of the DMLW may extend the right-of-way authorization if the power line is required for the development of additional mineral resources or to provide power to other sources.

Early Entry Authorization/Right-of-way

Once the DNR's Final Decision on this request becomes effective, the DNR will issue GVEA a land use permit for early entry to authorize construction, use and maintenance on the right-of-way until the final right-of-way permit is issued.

Upon submittal of the as-built survey, the DNR will issue the right-of-way permit to GVEA.

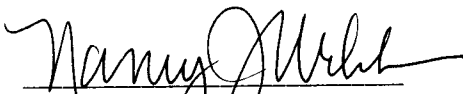
The land use permit and right-of-way will include the stipulations listed in Attachment 3.

Economic Benefits

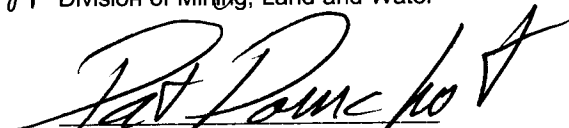
This power line provides the greatest economic benefit to the state for the use of this land. It allows for the development of the state's mineral interest at True North. Development of the powerline, could in the future, encourage settlement of nearby state land, or provide power to nearby residential areas. The same general reasons identified in the True North Project Haul Road Final Decision (ADL 416471), Section XI. Economic Benefits apply to the GVEA power line. Section XI is hereby incorporated by reference.

Decision

The Department of Natural Resources, Division of Mining, Land and Water finds that this power line improvement is a good use of state land. In addition, it provides the greatest economic benefit to the state for this land as it facilitates the development of the surrounding state land for mineral development, specifically the True North Project, and for potential residential or commercial uses.

for 
Robert Loeffler, Director
Division of Mining, Land and Water

December 20, 2000
Date


Pat Pourchot, Commissioner
Department of Natural Resources

December 20, 2000
Date

Appeal Right and Procedure

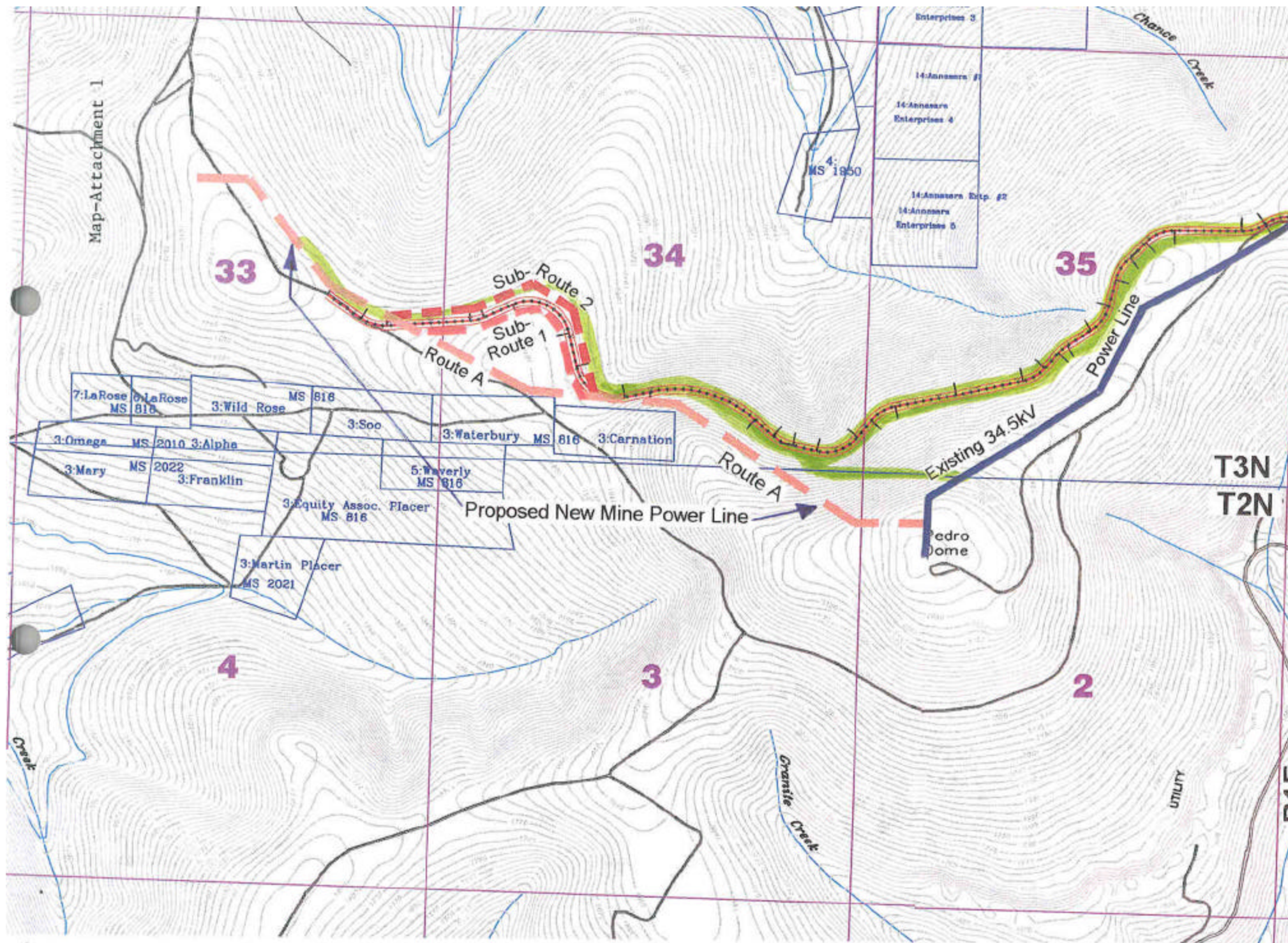
This is a final administrative order and decision of the department for purposes of an appeal to Superior Court. A person adversely affected by this final order and decision may (1) appeal to Superior Court within 30 days in accordance with the rules of the court, and to the extent permitted by applicable law, or (2) first request reconsideration of this decision, in accordance with AS 44.37.011 and 11 AAC 02.020, to Pat Pourchot, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501. Any such request for reconsideration must be received at that address, or received by being faxed to 1-907-269-8918, by January 9, 2001. Failure of the commissioner to act on a request for reconsideration by January 19, 2001 is a denial of reconsideration and is also a final administrative order and decision for purposes of an appeal to Superior Court. It may then be appealed to Superior Court.

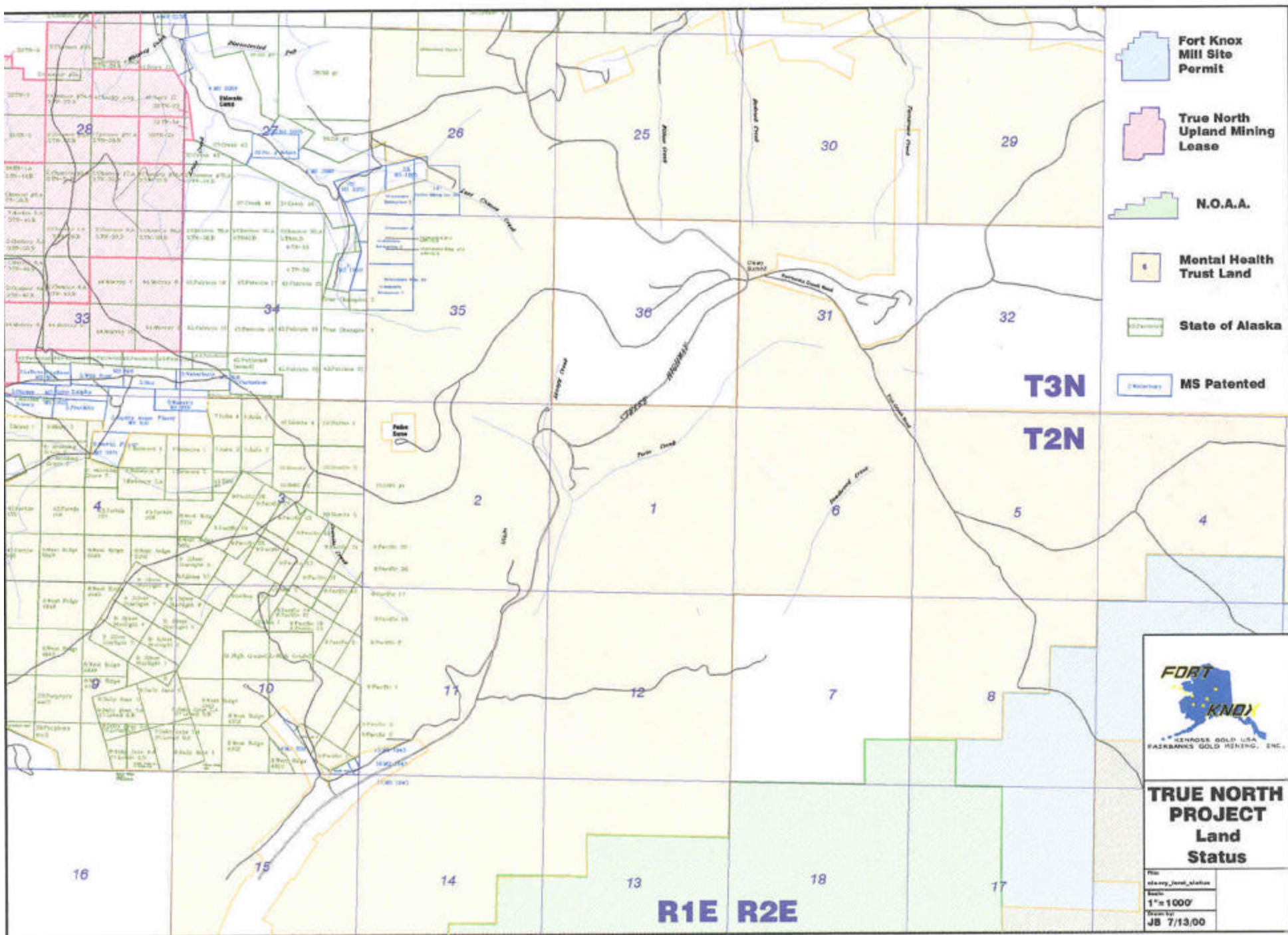
within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources. This decision goes into effect January 20, 2001 unless the commissioner first orders reconsideration.

At the time a request for reconsideration is filed, an appellant may submit additional written material to support it, including evidence or legal argument. If the Commissioner orders reconsideration and if the Commissioner in his discretion under 11 AAC 02.050(a) further determines that there are questions of fact to be resolved that require a hearing, the hearing will be held in Fairbanks on January 16, 2001 at 10:00 A.M. at the Noel Wien Library. The hearing procedures under 11 AAC 02.050(b) will be announced at the time of his determination, if any. If a hearing is held, an appellant may submit additional written material at the hearing.

Attachments

- Attachment 1: Map of GVEA power line alternatives
- Attachment 2: Land Status Map
- Attachment 3: Special Stipulations





Attachment 3

GVEA True North Power Line Right-of-way SPECIAL STIPULATIONS

1. **Authorized Representative.** The Authorized Representative for the Department of Natural Resources is the Northern Regional Manager, or designee. The Authorized Officer may be contacted at 3700 Airport Way, Fairbanks, Alaska 99709 or 907-451-2740. The Authorized Representative reserves the right to modify these stipulations or use additional stipulations as deemed necessary.
2. **Indemnification.** *Standard Stipulation No. 4 is hereby amended to read:* Permittee assumes all responsibility, risk and liability for all activities of Permittee, its employees, agents, invitees, contractors, subcontractors, or licensees directly or indirectly conducted in connection with this permit, including environmental and hazardous substance risks and liabilities, whether accruing during or after the term of this permit. Permittee shall defend, indemnify, and hold harmless the State of Alaska, its employees, and agents from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatever kind or nature, including all attorney's fees and litigation costs, arising out of, in connection with, or incident to any act or omission by Permittee, its employees, agents, invitees, contractors, subcontractors, or licensees, unless the sole proximate cause of the injury or damage is the negligence or willful misconduct of the State or anyone acting on the State's behalf. Within 15 days Permittee shall accept any such cause or action or proceeding upon tender by the State. This indemnification shall survive the termination of the permit.
3. **Valid Existing Rights.** This authorization is subject to all valid existing rights in and to the land under this authorization. The State of Alaska makes no representations or warranties whatsoever, either expressed or implied, as to the existence, number, or nature of such valid existing rights.
4. **Reservation of Rights.** The Division reserves the right to grant additional authorizations to third parties for compatible uses on or adjacent to the land under this authorization.
5. **Performance Guaranty.** The permittee shall provide a surety bond or other form of security acceptable to the Division in the amount of \$ 79,200.00 payable to the State of Alaska, DNR, Division of Mining, Land and Water, and/or the Mental Health Land Trust Office. This guaranty may be used to reclaim the route in the event construction begins and mining at the True North Project is not initiated. Such performance guaranty shall secure performance of the permittee's obligations hereunder. The amount of the performance guaranty may be adjusted by the Authorized State Representative upon approval of amendments to this authorization, changes in the development plan, upon any change in the activities conducted or performance of operations conducted on the premises. If Permittee fails to perform the obligations under this permit within a reasonable time, the State may perform Permittee's obligations at Permittee's expense. Permittee agrees to pay within 20 days following demand, all costs and expenses reasonably incurred by the State of Alaska as a result of the failure of the permittee to comply with the terms of this permit. The provisions of this permit shall not prejudice the State's right to obtain a remedy under any law or regulation. If the authorized officer determines that the permittee has satisfied the terms and conditions of this authorization the performance guaranty may be released. The performance guaranty may only be released in writing signed by the Authorized State Representative. The guaranty will be released upon completion of construction and the initiation of mining by FGMI.

GVEA has placed on file a \$5,000 Certificate of Deposit No. 0096213. This Certificate of Deposit is used as a perpetual performance guaranty to cover all of their authorizations. This will remain in effect for the term of this authorization.

6. **Insurance** The permittee shall secure or purchase at its own expense, and maintain in force at all times during the term of this permit, the following policies of insurance to protect both the permittee and the permittor (the State, its officers, agents and employees). Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the permittee's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be

7. furnished to the Authorized State Representative prior to occupancy. The certificate must provide for a 60-day prior notice to the State in the event of cancellation, non-renewal or material change of conditions. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, are material breaches of this permit and shall be grounds, at the option of the State, for termination of the permit. All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21.

Commercial General Liability Insurance: Such policy shall have minimum coverage limits of \$1,000,000 with a \$2,000,000 annual aggregate combined single limit per occurrence. The policy shall be written on an "occurrence" form and shall not be written as a "claims-made" form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. The State must be named as an additional named insured on the policy with respect to the operations of the permittee on or in conjunction with the permitted premises, referred to as ADL 416477.

8. **Preference Right.** No preference right for use or conveyance of the land is granted or implied by this authorization.
9. **Alaska Historic Preservation Act.** The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation (907) 269-8720 and shall be notified immediately.
10. **Assignment.** This permit may be transferred or assigned with prior written approval from the Authorized State Representative.
11. **Termination.** This permit does not convey an interest in state land and as such is revocable immediately, with or without cause.
12. **Maintenance.** The State assumes no responsibility for maintenance of improvements constructed on state land nor liability for injuries or damages attributable to that construction.
13. **Destruction of Markers.** All survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed lease corner posts shall be protected against damage, destruction, or obliteration. The permittee shall notify the Authorized State Representative of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the permittee's expense in accordance with accepted survey practices of the Division of Mining, Land and Water.
14. **Fuel and hazardous substances.** No fuel or hazardous substances may be stored on the right-of-way. The use and storage of hazardous substances by the permittee must be done in accordance with existing federal, state, and local laws, regulations, and ordinances. Hazardous substances must be removed from the site and managed in accordance with state and federal law. Debris (such as soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance and must be removed from the site and managed and disposed of in accordance with state and federal law. The site shall be protected from leaking or dripping hazardous substances or fuel during construction and maintenance of the right-of-way. The permittee shall place drip pans or other surface liners designed to catch and hold fluids under the parked equipment and vehicles, or the permittee shall develop an area for storage using an impermeable liner or other suitable containment mechanism.

15. **Notification.** The permittee shall immediately notify DNR and DEC by phone of any unauthorized discharge of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons on land. All fires and explosions must also be reported. The DNR 24 hour spill report number is (907) 451-2678; the Fax number is (907) 451-2751. The DEC spill report number is (800) 478-9300. DNR and DEC shall be supplied with all follow-up incident reports.
16. **Survey.** The permittee shall submit an as-built survey acceptable to the standards of the Division of Mining, Land and Water prior to the expiration of this early entry authorization.
17. **Reclamation.** GVEA may be required to reclaim the power line upon completion of FGMI's mining in the area. Any reclamation will be dependent upon other proposed uses in the area that require power distribution. GVEA will be required to demonstrate to the Director or representative that there is a demonstrated need to provide power distribution to other users in the area in order to leave the power line upon completion of FGMI's mining. A GVEA representative with the authority to commit GVEA to reclamation, should it be required, must execute the land use permit for early entry to construct, use and maintain the power line, and the final right-of-way permit.
18. **Compliance with Governmental Requirements; Recovery of Costs.** Permittee shall, at its expense, comply with all applicable laws, regulations, rules and orders, and the requirements and stipulations included in this authorization. Permittee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.
19. **Other Authorizations.** The issuance of this authorization does not alleviate the necessity of the permittee to obtain authorizations required by other agencies for this activity.
20. **Amendments.** To proceed in areas other than approved by the DMLW's Final Decision, the applicant must have prior authorization from the DMLW.
21. **Inspection.** Authorized representatives of the State of Alaska shall have reasonable access to the subject parcel for purposes of inspection. The permittee may be charged fees under 11 AAC 05.010(a)(7)(M) for routine inspections of the subject parcel, inspections concerning non-compliance, and a final closeout inspection.
22. **Term.** The term for this right-of-way shall be 10 years. The right-of-way is revocable and could be terminated earlier for non-use. The Director of the DMLW may extend the right-of-way authorization if the power line is required for the development of additional mineral resources or to provide power to other sources.
23. **Use Fee.** The use fee of 10 cents per lineal foot shall be submitted upon issuance of the land use permit for construction, use and survey.
24. **Late Payment Penalty Charges.** The permittee shall pay a fee for any late payment. The amount is the greater of either the fee specified in 11 AAC 05.010 or interest at the rate set by AS 45.45.010(a) and will be assessed on a past-due account until payment is received by the state.
25. **Returned Check Penalty.** A returned check fee as provided in 11 AAC 05.010 will be assessed for any check on which the bank refuses payment. Late payment penalties shall continue to accumulate.
26. **Change of Address.** The permittee shall maintain a current address with the DMLW. Any change of address must be submitted in writing to the Authorized Officer.

27. **Forest Resources.** Timber less than six inches in diameter, brush, and slash shall be disposed of to minimize the risk of fire and disease. To determine proper disposal methods, the permittee shall contact the Division of Forestry at 907-451-2600.
28. **Fire Prevention, Protection, and Liability.** The permittee shall take all reasonable precautions to prevent and suppress forest, brush, and grass fires and shall assume full liability for any damages to state land resulting from the negligent use of fire. The State of Alaska is not liable for damage to the permittee's personal property and is not responsible for forest fire protection of the permittee's activity.
29. **Operation of Vehicles.** Vehicles shall be operated without disturbing the vegetative mat and underlying substrate. To prevent damage to the vegetative mat and underlying substrate, winter cross country travel may begin only after 6 inches of snow and 12 inches of ground frost exist. Blading or removal of the vegetative mat is prohibited except as approved by the Authorized Officer.